

Title 48. Corporations and Associations

Miscellaneous Corporation Provisions.

Chapter 101. Special Purpose Corporations and Associations (Refs & Annos)

→ Part 5. Solicitation of Charitable Funds (Refs & Annos)

§ 48-101-501. Definitions

As used in this part, unless the context otherwise requires:

(1) "Charitable organization" means a group which is or holds itself out to be a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary organization, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety, or any person who solicits or obtains contributions solicited from the public for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state shall be a charitable organization for the purposes of this part. The definition shall not be deemed to include any authorized individual who solicits, by authority of such organization, solely on behalf of a registered or exempt organization, or on behalf of an organization excluded from the definition of charitable organization;

(2) "Contributions" means the promise or grant of any money or property of any kind or value, including the payment or promise to pay in consideration of a sale, performance or show of any kind which is advertised or offered in conjunction with the name of any charity. "Contribution" does not include bona fide fees, dues or assessments paid by members, provided that membership is not conferred solely as consideration for making a contribution in response to a solicitation;

(3) "Federated fund raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves, and where membership does not confer operating authority and control of the individual agencies upon the federated group organization;

(4) "Knowingly" or "knowing" means actual awareness of the falsity or deception, but actual awareness may be inferred when objective manifestations indicate that a reasonable person would have known or would have reason to know of the falsity or deception;

(5) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them;

(6) "Professional fund raising counsel" means any person who, for compensation, plans, manages, advises, consults or prepares material for a charitable organization for the solicitation of contributions in this state, but who does not solicit contributions and does not employ, procure, or engage any person to solicit contributions on behalf of a charitable organization. "Professional fund raising counsel" does not include an attorney, investment counselor, or banker who in the conduct of such person's profession advises a client. "Professional fund raising counsel" does not include a bona fide salaried officer, employee, or volunteer of a charitable organization;

(7) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization, whether such solicitation is performed personally or through such person's agents, servants or employees or through agents, servants or employees specially employed by or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on or advises a charitable organization in connection with the solicitation of contributions. Any independent marketing agent or entity to whom a professional solicitor assigns fund raising or solicitation responsibilities shall be deemed to be a professional solicitor for purposes of this part. A salaried officer or permanent employee of a charitable organization is not deemed to be a professional solicitor. However, any salaried officer or employee of a charitable organization that engages in the solicitation of contributions for compensation in any manner for more than one (1) charitable organization is deemed a professional solicitor. A professional solicitor does not include an attorney, investment counselor, or banker who in the conduct of such person's profession advises a client;

- (8) "Secretary of state" means the secretary of state or the secretary of state's authorized representative;
- (9) "Solicit" or "solicitation" means any oral or written request, however communicated, whether directly or indirectly, for a contribution;
- (10) "Solicitee" or "donor" means any person from whom a charitable contribution or donation is solicited, directly or indirectly, by whatever means by any professional solicitor, a charitable organization or other person, whether any contribution is received in response to the solicitation;
- (11) "Commercial co-venturer" means any person who:
- (A) Is organized for profit;
 - (B) Is regularly and primarily engaged in trade or commerce, other than in connection with soliciting for charitable or civic organizations or charitable purposes; and
 - (C) Conducts an advertised charitable sales promotion for a specified limited period of time.
- (12) Deleted by 2007 Pub.Acts, c. 523, § 5, eff. July 1, 2007.

§ 48-101-502. Exemptions; definitions

- (a) The provisions of this part do not apply to:
- (1) Bona fide religious institutions, educational institutions, or cooperative scholarship corporations regulated by title 49, chapter 4, part 1;
 - (2) A charitable organization which does not intend to solicit and receive and does not actually raise or receive gross contributions (total solicited revenue before any solicitation expenses have been deducted) from the public in excess of thirty thousand dollars (\$30,000) during a fiscal year; provided, that if the contributions raised from the public by any charitable organization during any fiscal year shall be in excess of thirty thousand dollars (\$30,000), the charitable organization shall, within thirty (30) days after the date it shall have received total contributions in excess of thirty thousand dollars (\$30,000), register with, and report to, the secretary of state as required by this part;
 - (3) Volunteer fire departments, rescue squads or local civil defense organizations;
 - (4) Community fairs, county fairs, district fairs and division fairs, as defined in § 43-21-104, that have been qualified by the commissioner of agriculture to receive state aid grants, pursuant to title 43, chapter 21, part 1;
 - (5) Political parties, candidates for federal or state office, and political action committees required to file financial information with federal or state election commissions;
 - (6) Hospitals which are subject to regulation by the Tennessee Department of Health; and
 - (7) Any corporation established by an act of Congress of the United States that is required by federal law to submit annual reports of its activities to Congress containing itemized accounts of all receipts and expenditures after being fully audited by the Department of Defense.
- (b) "Educational institution," for the purposes of this section, means an organization organized and operated exclusively for educational purposes and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and which is accredited by a recognized accrediting agency. Included in such definition are organizations composed of parents of students and other persons connected with the institution, which are organized and operated for the purpose of conducting activities in support of the operations or extracurricular activities of such institutions. "Educational institution" also includes private foundations soliciting contributions exclusively for such organizations.

(c) "Bona fide religious institutions," for the purpose of this section, includes:

(1) Ecclesiastical or denominational organizations, churches or established physical places for worship in this state, at which nonprofit religious services and activities are regularly conducted and carried on, and also includes those bona fide religious groups which do not maintain specific places of worship and which are not subject to federal income tax and are not required to file an IRS Form 990 under any circumstance; and

(2) Such separate groups or corporations which form an integral part of those institutions which are exempt from federal income tax as exempt organizations under the provisions of § 501(c)(3), of the Internal Revenue Code of 1954, or of a corresponding section of any subsequently enacted federal revenue act, and which are not required to file an IRS Form 990 under any circumstance, and which are not primarily supported by funds solicited outside their own membership or congregation; and

(3) Such institutions soliciting contributions for the construction and maintenance of a house of worship or residence of a clergy member.

(d) Any charitable organization which claims to be exempt from the registration provisions pursuant to § 48-101-502(a)(2) and which intends to or does solicit charitable contributions shall submit, to the secretary of state, a statement of the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. This statement shall be on a form prescribed by the secretary of state and shall be sworn to or affirmed by the principal officer of the charitable organization. No registration fee shall be required of any exempt charitable organization.

(e) Exemption from the registration requirements of this act shall not limit the applicability of other provisions of the act to a charitable organization.

§ 48-101-503. Review of registration; enforcement of registration requirements; uniform system of accounting; investigations

(a) The secretary of state may review registrations and enforce registration requirements for charitable organizations, professional fund raising counsel, and professional solicitors.

(b) The secretary of state shall prescribe a uniform system of accounting to determine "fund-raising costs" and "gross contributions" and may adopt rules and regulations to carry out the provisions of this part. Rules and regulations shall be adopted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The secretary of state is authorized to promulgate rules and regulations as the secretary of state may deem necessary to effectuate the purposes of Acts 1989, ch. 285. All such rules and regulations shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The secretary of state shall make such individual investigations of all applicants for registration and of any violations of this part as the secretary of state may deem necessary and impose authorized and appropriate sanctions.

§ 48-101-504. Filing of registration statement; initial registration; fee

(a) Every charitable organization which intends to solicit contributions from or within this state, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the secretary of state, upon forms prescribed by the secretary of state. Any registration statement which contains false, misleading, deceptive or incomplete information or documentation shall not be considered sufficient, except as specifically otherwise provided in this part.

The initial registration statement shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain

an office, the name and address of the person having custody of its financial records;

(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where, and the date when, the organization was legally established, the form of its organization, and a reference to any determination of its tax exempt status under the Internal Revenue Code;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A statement as to whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others and submit a true copy of any contract or agreement with any professional solicitor, fundraising counsel, or any other person who is directly or indirectly involved with the solicitation of contributions;

(7) A statement as to whether the organization is authorized by any other governmental authority to solicit contributions and whether it is or has ever been enjoined by any court from soliciting contributions;

(8) The general purpose or purposes for which the contributions to be solicited shall be used;

(9) The name or names under which it intends to solicit contributions;

(10) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(11) The names of the individuals or officers of the organization responsible for the final distribution of the contributions; and

(12) A statement as to whether any officer, director, manager, operator, or principal of the charitable organization has been the subject of an injunction, judgment, or administrative order or has been convicted of a felony.

(b) Except as otherwise herein provided, the registration forms and any other documents prescribed by the secretary of state shall be signed by two (2) authorized officers of the charitable organization, and such forms and documents shall be accompanied by an initial registration fee of fifty dollars (\$50.00) Provided, that bona fide Indian organizations whose principal purpose is to assist and promote the welfare of Indians shall be exempt from such registration fee. For the purposes of this subsection, a bona fide Indian organization shall be one that has been in existence for more than twenty (20) years and that carries out programs and provides services to federally-recognized Indians.

(c) During its first year of operation, a newly registered charitable organization shall provide quarterly financial reports, due within thirty (30) days after the end of each quarter of its current fiscal year, containing the following information:

(1) The gross amount of contributions received;

(2) The amount of contributions disbursed or to be disbursed to each charitable organization or charitable purpose represented;

(3) The aggregate amounts paid to any professional solicitor and/or fund raising counsel; and

(4) The amounts spent for overhead, expenses, commissions and similar purposes.

(d) Every charitable organization required to register pursuant to this part, having completed a fiscal year of operation, shall file with the secretary of state a financial report for its most recently completed fiscal year, in accordance with § 48-101-506(b)(1) and (2) or (3).

(e) Any organization which has applied for but not received a determination of tax exempt status shall file a copy of the completed application which has been submitted to the internal revenue service, and any letters received from the internal revenue service acknowledging receipt of the application.

(f) Any senior citizen center that obtains funding for the operation of its programs with funds provided through a contract with the state of Tennessee or through the federal government, as provided by the Older Americans Act of 1965, or other contracts primarily designed for the benefit of aged persons, is exempt from the annual registration fee of this subsection, if the center attaches a complete copy of the contract to the registration form, and the secretary of state certifies the contract is valid. For the purposes of this subsection, "senior citizen center" means a charitable organization represented and held out to the general public as a facility which contracts for meals, education, physical fitness, social contact and comfort to be provided to aged persons for the general welfare of the local community.

§ 48-101-505. Registration statement; parent organizations and chapters, branches or affiliates

(a) Each chapter, branch or affiliate of a parent organization or independent member agency of a federated fund-raising organization, may separately report the information required by § 48-101-504, or report the information to its parent organization or to the federated fund-raising organization with which it is affiliated, which shall then transmit such information as to its affiliates, branches, chapters or independent agency members to the secretary of state along with its own statement.

(b) A parent organization filing the registration statements of one (1) or more of its chapters, branches, or affiliates along with its own statement, and a federated fund-raising organization filing the statements of one (1) or more of its independent member agencies along with its own statement, shall pay a single registration fee in accordance with the schedule as provided in § 48-101-504(b) for itself and for such chapters, branches, affiliates or independent member agencies whose statements are filed by it at the same time as its own statement. However, when an independent member agency of a federated fund-raising organization solicits or receives contributions from any source other than the federated fund-raising organization or a governmental agency, such independent member agency shall be required to register independently and pay its own filing fee, unless otherwise exempt by this part. When a chapter, branch, or affiliate of a parent organization solicits or receives contributions from any source other than the parent organization or a governmental agency, such chapter, branch, or affiliate shall register independently and pay its own filing fee, unless otherwise exempt by this part.

§ 48-101-506. Examination of applications; filing required information; registration renewal; withdrawal of registration

(a) The secretary of state shall examine each application for conformity with the requirements of this part and all relevant rules and regulations.

(b) A renewal of registration shall be made in the same manner as the initial registration. The renewal registration shall be accompanied by the following:

(1)(A) A copy of a financial statement on forms approved by the secretary of state. Such report shall also specifically identify the amount of funds raised and all costs and expenses incidental thereto, all publicity costs, and costs of allocation or disbursement of funds raised. This report shall be signed by at least two (2) authorized officers of the organization, one of whom shall be the chief fiscal officer. Such officers shall certify that such report is true and correct to the best of their knowledge; and

(B) The secretary may require, by regulation, a copy of any and all forms required to be filed by the organization with the United States Internal Revenue Service, and any other information the secretary deems appropriate to substantiate how funds were raised and spent by the organization.

(2) The annual report of every charitable organization which received in excess of five hundred thousand dollars (\$500,000) in gross revenue during the most recently completed fiscal year shall be accompanied by:

(A) An audited financial statement, presented in accordance with generally accepted accounting principles which has been examined by an independent certified public accountant for the purpose of expressing an opinion thereon; and

(B) Any and all forms required to be filed by a charitable organization with the United States internal revenue service.

For the purpose of determining gross revenue for this subdivision only, grants received from government agencies and private foundations, designated by the internal revenue service as § 501(c)(3) organizations, shall be excluded.

(3) Deleted by 2007 Pub.Acts, c. 523, § 15, eff. July 1, 2007.

(c) The registration renewal statement shall be signed by two (2) authorized officers of the charitable organization, one of whom shall be the chief fiscal officer, and such forms and documents shall be accompanied by a registration renewal fee in accordance with the following schedule:

Organization's Gross Revenue	Annual Filing Fee
\$0-\$48,999.99	\$100.00
\$49,000.00-\$99,999.99	\$150.00
\$100,000.00-\$249,999.99	\$200.00
\$250,000.00-\$499,999.99	\$250.00
\$500,000.00-ABOVE	\$300.00

For purposes of this subsection, "organization's gross revenue" means the latest figures for annual gross revenue from whatever source reported by the organization to the secretary of state pursuant to subsection (b).

(d) Each charitable organization shall file all information required by this part with the secretary of state within six (6) months of the close of its fiscal year. The last day of the sixth month following the month in which the fiscal year of the organization ends shall be the anniversary date of the organization. All registrations shall expire each year on the anniversary date of the organization. Each annual registration application shall be received by the secretary of state on or before the anniversary date. Each charitable organization shall be required to supplement its registration application during the registration period as changes occur which affect the documentation required by § 48-101-504(a).

(e) For good cause shown, the secretary may extend the time for filing a renewal application for a period not to exceed ninety (90) days during which time the previous registration remains in effect. "Good cause" includes, but is not limited to, filing with the Internal Revenue Service an application for extension of time to file an exempt organization return.

(f) Applications received after the expiration of the current registration period shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the report is late filed. The late filing fee shall accompany every late filed application. In addition to the late fee provided for herein, any organization which files a late application is also subject to the imposition of civil penalties for violation of any portion of this part.

(g) Any person that intends to continue to solicit contributions after its anniversary date and fails to renew its registration by the time of the expiration thereof is in violation of this part.

(h) Any person that ceases solicitation activities after registration must notify the secretary of state of such fact within thirty (30) days after solicitation activities end. Within ninety (90) days after the end of the solicitation activities or ninety (90) days after its fiscal year ends, that person shall file with the secretary financial documentation, pursuant to subsection (b).

§ 48-101-507. Professional solicitors and fund raising counsel

(a)(1) No person shall act as a professional solicitor for any charitable organization, whether exempt from the provisions of this part or not, unless such person has first registered with the secretary of state. Registration shall include the filing of a complete application, bond and filing fee.

(2) No person who has been convicted within the past five (5) years for a violation of any provision of this part, and no person convicted of a felony in this or any other state, shall serve as an employee, member, officer or agent of any professional solicitor until such person's civil rights have been restored. The professional solicitor shall maintain during each solicitation campaign and for three years after its completion the name and address of each employee, agent, or other person involved in the solicitation campaign.

(3) Application for registration shall be in writing in the form prescribed by the secretary of state and contain such information as the secretary of state may require. A registration application that contains false, misleading, deceptive or incomplete information or document shall not be considered sufficient or complete. All registrations for professional solicitors shall expire on December 31 of the year for which they are issued.

(4) Applications received after December 31 shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the report is late filed. The late filing fee shall accompany every late-filed application. In addition to the late fee provided for herein, any organization which files a late application is also subject to the imposition of civil penalties for violation of any portion of this section.

(5) A bond in the sum of twenty-five thousand dollars (\$25,000) shall be filed with the registration application and shall be approved by the secretary of state. The bond shall name the applicant as the principal obligor with one (1) or more sureties, satisfactory to the secretary of state, whose liability in the aggregate as such sureties will at least equal that sum. It shall be payable to the State of Tennessee for the use of the secretary of state and any person who may have a cause of action against the obligor of the bond for any violations under this part or for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. An individual, partnership or corporation, which is a professional solicitor, may file a consolidated bond on behalf of all its members, officers and employees. The bond shall continue in effect so long as a registration is in effect.

(6) The annual registration fee for every person who is a professional solicitor shall be eight hundred dollars (\$800).

(b) Deleted by 2007 Pub.Acts, c. 523, § 19, eff. July 1, 2007.

(c)(1) No person shall act as a fundraising counsel for any charitable organization, whether exempt from the provisions of this part or not, unless such person has first registered with the secretary of state. Registration shall include the filing of a complete application and filing fee.

(2) Application for registration shall be in writing in the form prescribed by the secretary of state and contain such information as the secretary of state may require. A registration application that contains false, misleading, deceptive or incomplete information or document shall not be considered sufficient or complete. All registrations for fundraising counsel shall expire on December 31 of the year for which they are issued.

(3) Deleted by 2007 Pub.Acts, c. 523, § 22, eff. July 1, 2007.

(4) Applications received after December 31 shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or portion thereof, that the application is late filed. The late filing fee shall accompany every late-filed application. In addition to the late fee provided for herein, any person who files a late application is also subject to the imposition of civil penalties for violation of any portion of this section.

(5) The annual registration fee for every person who is a fundraising counsel shall be two hundred fifty dollars (\$250).

(d)(1) A professional solicitor shall file a financial report for a solicitation campaign with the secretary of state within ninety (90) days after a solicitation campaign has been completed or within ninety (90) days after the end of the fiscal year end of any campaign which lasts for more than one (1) year. The financial report shall include gross revenue and an itemization of all expenditures from those funds. The report shall be completed on a form prescribed by the secretary of state and signed by an authorized official of the professional solicitor and two (2) authorized officials of the charitable organization, who shall certify that such report is true and complete to the best of their knowledge. The financial report shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards or regulations which may be issued by the secretary of state. If the solicitation campaign which is conducted by a professional solicitor is one conducted nationally or regionally and is not confined only to this state, the financial information required to be filed pursuant to this subsection shall be inclusive of the national or regional campaign. Each charitable organization shall make available to its professional solicitor any necessary fiscal or other records needed to enable the professional solicitor to comply with this subsection.

(2) Financial reports for solicitation campaigns shall be assessed a late fee of twenty-five dollars (\$25.00) for each month, or

portion thereof, that the report is late filed. The late filing fee shall accompany every late-filed campaign report. In addition to the late fee provided for herein, any person who files a late financial report is also subject to the imposition of civil penalties for violation of any portion of this section.

(3) A professional solicitor or fund-raising counsel who, by contractual agreement with a charitable organization, does not receive donations on behalf of a charitable organization, does not have access to the funds raised and does not make deposits to and does not have signature authority with, or any other authority over, a charitable organization's bank accounts, shall not be required to file an audited financial statement as set forth in subdivision (d)(1). In lieu of the audited financial statement, the professional solicitor or fund-raising counsel shall be required to file with the secretary of state, on a form approved by the secretary of state, a financial report which provides an itemization of expenses, costs, reimbursements and fees the charitable organization is charged for each solicitation campaign performed. The form shall be due within ninety (90) days after the completion of any campaign or within ninety (90) days after the end of the fiscal year of any campaign which lasts longer than one (1) year. The report shall be signed by an authorized official of the professional solicitor and two (2) authorized officials of the charitable organization, who shall certify under oath that such report is true and complete to the best of their knowledge.

§ 48-101-508. Denial of registration or exemption; appeal and review

(a) The division shall examine each registration statement and supporting documents filed by all applicants and shall determine whether the registration requirements are satisfied. If the division determines that the registration requirements are not satisfied, the department must notify the applicant within ten (10) working days of its receipt of its registration statement or the registration statement is deemed to be approved. Within seven (7) days after receipt of notification that the regulation requirements are not satisfied, the applicant may request a hearing. The hearing must be held within seven (7) days of receipt of the request, and a determination must be rendered within three business days of the hearing.

(b) Judicial review of final decisions shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 48-101-509. Financial records; solicitation campaign records; inspection

(a) Every charitable organization and professional solicitor, subject to the provisions of this part, shall, as to their activities in Tennessee as may be covered by this part and in accordance with the rules and regulations prescribed by the secretary of state, keep:

(1) True and accurate fiscal records, including, but not limited to, all income and expenses; and

(2) True records regarding the conduct of any solicitation campaigns, including records of any documents, information, notices or applications required to be prepared or filed pursuant to § 48-101-513. Unless otherwise provided, such records shall be retained for a period of at least three (3) years after the end of the period of registration to which they relate.

(b) Upon request and at a reasonable time and place within Tennessee, such records, as well as any other records regarding solicitation campaigns within this state, shall be made available to the secretary of state, the attorney general and reporter or an appropriate district attorney general for inspection.

§ 48-101-510. Reciprocity with foreign states

(a) The secretary of state may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations. Pursuant to such agreements, the secretary of state may accept information filed by a charitable organization with the appropriate authority of another state, in lieu of the information required to be filed in accordance with the provisions of this part, if such information is substantially similar to the information required under this part.

(b) The secretary of state shall also grant an exemption from the requirement for the filing of the annual registration statement

to charitable organizations organized under the laws of another state, having their principal place of business outside the state, whose funds are derived principally from sources outside the state, and which have been granted exemption from the filing of registration statements by the state under whose laws they are organized, if such state has a statute similar in substance to the provisions of this part.

§ 48-101-511. Public records

Registration statements and applications, reports, and all other documents and information required to be filed under this part or by the secretary of state shall be public records in the office of the secretary of state and shall be open to the general public for inspection at such time and under such conditions as the secretary of state may prescribe. The secretary of state, in the secretary of state's discretion, may compile, summarize, publish or otherwise release to the public any information contained in applications and any other documents filed with or received by the secretary of state under this part.

§ 48-101-512. Furnishing identification to solicitors

It is the duty of every charitable organization to furnish identification to persons who solicit contributions from the public on behalf of the charitable organization, including, but not limited to, those persons soliciting on behalf of an exempt organization or nonexempt organization and all professional solicitors. The solicitor shall be required to have and produce or display, on demand, identification indicating that the solicitor has been duly authorized by the organization for which the solicitor is soliciting. Such identification shall include, but not be limited to, the name of the holder of the identification and the name and the registration number of the charitable organization.

§ 48-101-513. False or misleading practices; authorization requirement; disclosures; records; conflict of interest

(a) No charitable organization subject to this part shall solicit funds from the public, except for charitable purposes, or expend funds raised for charitable purposes for noncharitable purposes.

(b) Unfair, false, misleading or deceptive acts and practices affecting the conduct of solicitations for contributions are declared unlawful. No person shall use or intend to use false or materially misleading advertising or promotional material in connection with any solicitation for a charitable organization or a charitable purpose. It is the intent of the general assembly that the courts in interpreting this provision should look to the judicial interpretations given the Tennessee Consumer Protection Act, compiled in title 47, chapter 18, part 1, and § 5(A)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)) for guidance.

(c) No charitable organization subject to the provisions of this part shall use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state, but the use of the following statement shall not be deemed a prohibited exploitation: "Registered with the Tennessee Secretary of State as required by law. Registration No. _____."

(d) No person shall, in connection with the solicitation of contributions for or the sale of goods or services of, a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose behalf such solicitation or sale is being conducted is a charitable organization, or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(e) No person shall, in connection with the solicitation of contributions or the sale of goods or services for charitable purposes, represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes, or a charitable organization connected therewith, when such person has not given written consent to the use of such person's name for these purposes; any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given such member's consent to the use of such member's name in the campaign.

(f) No person shall make any representation that such person is soliciting contributions for or on behalf of a charitable

organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(g) No professional solicitor shall solicit, in any manner whatsoever, in the name of a charitable organization, whether exempt from this part or not, unless:

(1) Prior to the commencement of each solicitation campaign, a completed solicitation campaign notice has been filed by a professional solicitor with the secretary of state on forms prescribed by the secretary of state. Such notice shall include, but not be limited to, a description of the solicitation event or campaign, the location and the telephone number from which the solicitation is to be conducted, the names and residence addresses of each employee or other person who is working in connection with such campaign, and the account number and location of all bank accounts where receipts from such campaign will be deposited. An authorized official of the charitable organization on whose behalf the professional solicitor is acting, as well as an authorized official of the professional solicitor, shall certify that the solicitation campaign notice is true and complete. Within seventy-two (72) hours after any modifications or changes in the information or documentation required herein, the secretary of state shall be notified in writing of such changes;

(2)(A) Prior to beginning any solicitation, such professional solicitor has filed with the secretary of state a true copy of any written agreement or contract which may have been entered into between a charitable organization and the professional solicitor, which shall state the minimum amount or percentage, if any, which a charitable organization shall receive of revenues solicited, after solicitation expenses, as a result of a solicitation campaign;

(B) If any agreement or contract between a professional solicitor and a charitable organization is oral, a written summary of the agreement or contract which sets forth the terms, conditions, fees, percentage splits and costs of the oral agreement or contract must be submitted to the secretary of state prior to beginning any solicitation or sales promotion campaigns;

(C) Within seven (7) days of any change, modification or termination of any agreement or contract that a professional solicitor has entered into with a charitable organization, a notice of such change, modification or termination must be filed with the secretary of state, along with a true copy of the new agreement which includes the changes and modifications in the terms, conditions, fees, percentage splits and costs;

(h) Deleted by 2007 Pub.Acts, c. 523, § 27, eff. July 1, 2007.

(i)(1) A fund-raising counsel, upon entering into an agreement with any charitable organization, whether exempt from this part or not, must submit to the secretary of state a true copy of any written agreement or contract with a charitable organization prior to beginning any consultation services. If the agreement or contract is oral, a written summary of the agreement or contract which sets forth the terms, conditions and consulting fees of the agreement or contract must be submitted to the secretary of state prior to beginning any consultation services.

(2) Within seven (7) days of any change, modification or termination of any agreement or contract a fund-raising counsel has entered into with a charitable organization, a notice of such change, modification or termination must be filed with the secretary of state, along with a true copy of the new agreement which includes the changes and modifications in the terms, conditions or consulting fees.

(j)(1) A paid solicitor shall be responsible for complying with, or for causing compliance with, each of the following requirements:

(A) Prior to orally requesting a contribution, or contemporaneously with a written request for a contribution, it shall be clearly and conspicuously disclosed at the point of solicitation the name of the paid solicitor as on file with the division and that the solicitation is being conducted by a "paid solicitor".

(B) In the case of a solicitation campaign conducted orally, whether by telephone or otherwise, a written confirmation shall be sent to each person who has contributed or pledged to contribute, within five (5) days after that person has been solicited, which shall include a clear and conspicuous disclosure of the information required by paragraph (A) of this subsection.

(C) It shall not be represented that tickets to events will be donated for use by another, unless the following requirements have been met:

(1) The paid solicitor shall have commitments in writing, from charitable organizations stating that they will accept donated tickets and specifying the number of tickets they are willing to accept; and

(2) No more contributions for donated tickets shall be solicited than the number of ticket commitments received from charitable organizations.

(2) The professional solicitor shall maintain a record of the names of donors, their addresses and the date that their donations were received for a three-year period after a solicitation campaign has been completed. No donor list, information or documentation, required to be maintained under this subsection, which is obtained by the secretary of state pursuant to this part, unless otherwise ordered by a court for good cause shown, shall be produced for inspection, copied by or its contents disclosed to any person other than an authorized representative of the secretary of state, the attorney general and reporter or the attorney general and reporter's representative, or other proper law enforcement officials for the purpose of enforcing the provisions of this part or prosecuting other criminal or civil violations, without the consent of the person who produced the information or documentation. The secretary of state, the attorney general and reporter or the attorney general and reporter's representative or other proper law enforcement officials may use such information or documentation as determined necessary in the enforcement of this part or other criminal or civil laws, including the presentation as part of any administrative or judicial proceedings.

(3) Prior to the commencement of each solicitation campaign, a professional solicitor shall file with the secretary of state copies, or samples, of each type of solicitation campaign literature or promotional materials utilized in the solicitation campaign, including, but not limited to, the text of any solicitation scripts or pitches made to the public orally, which is utilized in the campaign. Within seven (7) days after any modification or changes in campaign solicitation literature or promotional materials utilized by the professional solicitor, the secretary of state shall be notified in writing and be given samples or copies of such changes and modifications.

(k) No person shall, in connection with the solicitation of contributions or the sale of goods, magazines, newspaper advertising, or any other service, use the name "POLICE," "FIREFIGHTER," or "FIREMEN," unless properly authorized by a bona fide police or firefighter organization or police or fire department. Such authorization must bear the signatures of two (2) bona fide members of the organization or department.

(l)(1) No person or organization, subject to this part, who fails to file any registration application, statement, report, or other information required to be filed with the secretary of state under this part as a prerequisite to registration shall engage in any of the activities permitted duly registered persons or organizations under the provisions of this part. No person or organization shall engage in charitable solicitation without a current registration; and

(2) No professional solicitor shall engage in solicitations on behalf of a nonexempt charitable organization, if such professional solicitor has knowledge that such nonexempt organization has failed to file a registration application with the secretary of state.

(m) Deleted by 2007 Pub.Acts, c. 523, § 33, eff. July 1, 2007.

(n) A professional solicitor, such professional solicitor's agent, servant or employee shall disclose upon request by the solicitee the percentage of gross contributions raised by the professional solicitor which shall be received by the charitable organization after solicitation expenses, if known, or otherwise disclose the guaranteed minimum contract amount, which the charitable organization shall receive as a result of the solicitation campaign.

§ 48-101-514. Investigations; contested case hearings; remedies; criminal proceedings

(a)(1) The secretary of state, upon the secretary of state's own motion or upon complaint of any person, if the secretary of state has reasonable ground to suspect any violation of this part or any rule thereunder or to aid in enforcement of this part, may publicly or privately investigate as the secretary of state deems necessary any charitable organization, professional

solicitor or other person to determine whether such person or organization has filed any registration application or other information required under this part that contains false or misleading statements, has conducted any solicitation of contributions by any unfair, false, misleading or deceptive means or manner, or has otherwise violated any provision of this part. If the secretary of state finds that any application or other information contains false or misleading statements or that a registrant under this part has violated the provisions thereof, the secretary of state may find that such registrant's registration is improper or unlawful. Further, the secretary of state, or the secretary of state's authorized representative, may impose a civil penalty of not more than five thousand dollars (\$5,000) for each and any violation of this part or a rule thereunder. Upon notice to the affected parties of an order by the secretary of state that registration is improper or unlawful and/or that sanctions should be imposed, including civil penalties, the affected party may seek review of that decision by requesting a "contested case" hearing, which shall be conducted pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) Any civil penalty shall be enforced in the following manner:

(A) If a petition for review of the assessment of a penalty through a "contested case" hearing is not filed within thirty (30) days after the date the assessment is served, the affected party shall be deemed to have consented to the assessment and it shall become final;

(B) Whenever any assessment has become final, because of a person's failure to appeal the secretary of state's assessment or otherwise, the secretary of state, in the name of the state, may apply to the appropriate court for a judgment and seek execution on such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment; and

(C) The secretary of state may institute proceedings for assessment in the chancery court of Davidson County or in the chancery court of the county in which all or part of the violation or failure to comply occurred, or in the county in which such person resides, has such person's principal place of conducting solicitations, or has conducted or transacted business or solicitation campaigns.

(b)(1) In conducting a public or private investigation as set forth in this part, the secretary of state or the secretary of state's authorized representative may issue subpoenas and summon witnesses, administer oaths to such witnesses, take the depositions of witnesses, compel the production of documents, exhibits, records or things, and require testimony on any issue related to the investigation.

(2) The secretary of state may visit, investigate or place investigative personnel in the office or places of operation of a charitable organization or professional solicitor.

(3) In addition to the authority to inspect fiscal or other records set forth in § 48-101-509, the secretary of state, in conducting a public or private investigation, may compel by either a request for production of documents, exhibits or things or subpoena duces tecum the presentation or delivery of all books, records, documents or other tangible items, by any person, which the secretary of state believes to be pertinent to the conduct of such investigation.

(4) Subpoenas under this part may be served by registered mail, return receipt requested, to the addressee's registered mailing address, or by such personnel as the secretary of state may designate, or shall be directed for service to the sheriff of the county where such witness resides is conducting a solicitation campaign or is found or where such person in custody of any books, records or papers resides or is found.

(5) In case of a refusal to obey a subpoena issued to any person under this part, any circuit or chancery court of this state within the jurisdiction in which the person refusing to obey the subpoena resides or is found may issue to such person, upon application by the secretary of state, an order requiring such person to appear before the court to show cause why such person should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as a contempt of court.

(6) At any time prior to the return date specified in the secretary of state's subpoena or request for production of documents, exhibits, or things pursuant to this subsection, or within the ten (10) days following service of such subpoena or request, whichever is shorter, any person from whom information has been requested may petition the circuit or chancery court of Davidson County, stating good cause, for a protective order to extend the return date for a reasonable time, or to modify or

set aside the subpoena or request for production. The secretary of state shall receive at least one (1) day's notice of such a petition and shall be given an opportunity to respond.

(7) Any person who has received a subpoena or request for production pursuant to this part, and who, with intent to avoid, evade or prevent compliance, in whole or in part, removes from any place, conceals, withholds, destroys, mutilates, falsifies or by any other means alters any documentary material in the possession, custody or control of any person subject to such notice, is subject to a civil penalty of not more than two thousand five hundred dollars (\$2,500) recoverable by the state in addition to any other appropriate sanction.

(c)(1) Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this part or any rule or order hereunder, and that proceeding would be in the public interest, the secretary of state may in the secretary of state's discretion bring an action, in the name of the state, through the attorney general and reporter in the circuit or chancery court of any county of this state, to:

(A) Enjoin the acts, practices or violations of this part;

(B) Impose civil penalties;

(C) Appropriately remedy damages caused directly or indirectly by any violations of this part;

(D) Prohibit the disposing of any contributions or altering in any other way the financial status of that person or organization;

(E) Enforce compliance with this part or any rule or order hereunder; and

(F) Provide other appropriate relief for violations of this part.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged violation of this part took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of conducting solicitations, conducts, transacts, or has transacted solicitations or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) Upon a showing of a violation of this part, the courts are authorized to:

(A) Issue orders to restrain or enjoin, temporarily or permanently, violations of this part;

(B) Disgorge proceeds from unlawful solicitations;

(C) Provide restitution to solicitees or injured charitable organizations;

(D) Forfeit to the state any unlawfully obtained contributions;

(E) Prohibit the disposal of assets or any contributions or the altering of the financial status of any person or organization in violation of this part;

(F) Appoint a receiver or conservator of a defendant's assets; and

(G) Grant other proper equitable relief.

(4) The court may not require the secretary of state to post a bond, and no costs shall be taxed to the secretary of state in actions commenced under this part.

(5) Whenever any order for injunctive relief or other relief is granted in an action, or pursuant to an application by the secretary of state in the name of the state under this part, reasonable costs, including the costs of investigation, and attorney's

fees may be awarded to the secretary of state, for use by the secretary of state in defraying the costs of administering this part.

(6) Any knowing violation of the terms of an injunction or order for other relief issued pursuant to subdivision (3) shall be prima facie evidence of a violation of this part in any action brought pursuant to this section and is punishable by a civil penalty of not more than ten thousand dollars (\$10,000) recoverable by the state for each violation, in addition to any other appropriate relief.

(d) The secretary of state, or the secretary of state's designee, may appear before any court of competent jurisdiction empowered to issue warrants of arrest in criminal cases and request the issuance of a warrant; upon presentation of probable cause, the court shall issue a warrant directed to any sheriff, deputy sheriff, or police officer.

§ 48-101-515. Crimes and offenses

Any person who willfully and knowingly violates any provisions of this part or who willfully and knowingly gives false or incorrect information to the secretary of state, in filing statements or reports required by this part, whether such report or statement is verified or not, commits a Class B misdemeanor for the first offense, punishable as provided in § 40-35-111, and for the second and any subsequent offense commits a Class E felony.

§ 48-101-516. Out of state charitable organizations or solicitors

(a) Any charitable organization or professional solicitor which has its principal place of business without the state, or which is organized under and by virtue of the laws of a foreign state, and which solicits contributions from people in this state, shall be subject to the provisions of this part and shall be deemed to have irrevocably appointed the secretary of state as its agent upon whom may be served any summons, subpoena duces tecum or other process directed to such charitable organization or professional solicitor or any partner, principal officer or director thereof in any action or proceeding brought under the provisions of this part.

(b) Service of such process upon the secretary of state shall be made by personally delivering to and leaving with the secretary of state a copy thereof at the capitol in Nashville. Such service shall be sufficient service; provided, that notice of such service and a copy of such process are forthwith sent to such charitable organization or professional solicitor by registered or certified mail with return receipt requested at its office, as set forth in the registration form required to be filed with the secretary of state pursuant to this part or, in default of the filing of such forms, at the last address known.

§ 48-101-517. Funds used to defray costs of administration

Funds collected under the provisions of this part shall be used by the secretary of state to defray the cost of administering this part.

§ 48-101-518. Construction of law; conflicts with local ordinances or regulations; municipal powers

(a) The powers and remedies provided in this part shall be cumulative and supplementary to all other powers and remedies otherwise provided by law. The invocation of one (1) power or remedy herein shall not be construed as excluding or prohibiting the use of any other available remedy.

(b) This part shall not be construed to preempt any more stringent county or municipal provisions or to restrict local units of government from adopting more stringent provisions, and, in such case, such provisions shall be complied with if the registrant desires to solicit within the geographic district of the local unit of government.

(c) Nothing in this part shall be construed to preempt any municipality from exercising general police powers of municipalities by ordinance or otherwise over organizations which are excluded from the application of this part or from organizations which are included within the provisions of this part.

(d) In the event the provisions of this part, insofar as prohibited practices are concerned, conflict with any ordinance or regulation of any municipality, the most restrictive provisions shall apply; further, such regulations or ordinances adopted by a municipality may be broader in scope and more restrictive in their application than the provisions of this part.

(e) Insofar as reporting or disclosure of financial reports is concerned, the right to require information not included in this part is hereby expressly reserved unto the municipalities of this state. Any municipality in this state is authorized to accept financial reports to the secretary of state as financial reports which may be required by municipal ordinances or regulations.

(f) Nothing in this part shall be construed to require any municipality which has adopted, prior to July 1, 1977, ordinances or regulations controlling, omitting, or prohibiting certain types of solicitation practices to adopt the accounting practices provided for in this part; provided, that any municipality which adopts such ordinances after July 1, 1977, shall conform to the accounting practices as provided for in this part.

§ 48-101-519. Commercial co-venturers; charitable sales; registration or exemption; records

(a) No commercial co-venturer shall conduct any charitable sales promotion in Tennessee on behalf of a charitable or civic organization unless the charitable or civic organization is duly registered or granted the appropriate exemption.

(b) Prior to any charitable sales promotion in Tennessee, the commercial co-venturer shall have a written agreement with the charitable or civic organization on whose behalf the charitable sales promotion is to be conducted. Such agreement shall be signed by an authorized representative of the commercial co-venturer and two officers of the charitable or civic organization.

(c) The commercial co-venturer shall maintain all records in connection with the charitable sales promotion for a period of three years after the end date of the charitable sales promotion. All such records shall be made available to the division upon request.

§ 48-101-519. Reserved

§ 48-101-520. Private actions

(a)(1) Any solicitee or person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person of an unfair, false, misleading or deceptive act or practice declared to be unlawful by this part or any other violation of this part, may bring an action individually to recover actual damages.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged unfair, false, misleading or deceptive act or practice, or other violation of this part, took place, is taking place, or is about to take place, or in the county in which such person conducting solicitations resides, has such person's principal place of conducting solicitations, conducts, transacts, or has transacted solicitations, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) Any private action commenced under the provisions of this part shall be brought within one (1) year from a person's discovery of the violation of this part, but in no event shall an action under this part be brought after four (4) years from the date of the solicitation giving rise to the claim for relief.

(b)(1) If the court finds that the use or employment of the unfair, false, misleading or deceptive act or practice or other violation was a willful or knowing violation of this part, the court may award three (3) times the actual damages sustained and may provide such other relief as it considers necessary and proper.

(2) In determining whether treble damages should be awarded, the trial court may consider, among other things:

(A) The competence of the solicitee;

(B) The nature of the deception or coercion practiced upon the solicitee;

(C) The damage to the solicitee; and

(D) The good faith of the person found to have violated the provisions of this part.

(c) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating or who is otherwise likely to violate this part; provided, that such action shall not be filed once the secretary of state has commenced a proceeding pursuant to § 48-101-514(c).

(d) Any person who has been affected by an act or practice declared to be a violation of this part may accept any written reasonable offer of settlement made by the person or persons considered to have violated this part; provided, that the tender of acceptance of such a settlement offer shall not abate any proceeding commenced by the secretary of state pursuant to § 48-101-514(c).

(e) Any permanent injunction, judgment, or final court order made pursuant to § 48-101-514(c), which has not been complied with, shall be prima facie evidence of the violation of this part in any action brought pursuant to this section.

(f) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorney's fees and costs.

(g) Upon the commencement of any action brought under subsections (a) and (b), the clerk of the court shall mail a copy of the complaint or other initial pleading to the secretary of state and, upon the entry of any judgment, order, or decree shall mail a copy to the secretary of state.

§ 48-101-521. Repealed by 2007 Pub.Acts, c. 523, § 36, eff. July 1, 2007